



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MRA-22/48798

PRELIMINARY RECITALS

Pursuant to a petition filed April 12, 2001, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Grant County Dept. of Social Services in regard to Medical Assistance (MA), a hearing was held on May 16, 2001, at Lancaster, Wisconsin.

The issue for determination is whether the petitioner is eligible for MA because her assets must be used to generate income for the community spouse.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)

c/o Marshalene Gore

Center on Aging of Grant County

Box 383, Highway 35/61 South

Lancaster, WI 53813

Representative:

Marshalene Gore

Center on Aging of Grant County

Box 383, Highway 35/61 South

Lancaster, WI 53813

Wisconsin Department of Health and Family Services

Division of Health Care Financing

1 West Wilson Street, Room 250

P.O. Box 309

Madison, WI 53707-0309

By: Rita Noble, ESS

Grant County Dept Of Social Services

8820 Hwys 35 & 61 South

PO Box 447

Lancaster, WI 53813

ADMINISTRATIVE LAW JUDGE:

Joseph A. Nowick

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN 390-22-9174, CARES #1105816010) is a resident of Grant County.
2. The petitioner has been receiving long-term care services in her home for some time. The petitioner applied for a waiver slot but the application for MA was denied on February 28, 2001. After

compiling a summary of petitioner's income and assets, the county denied the application because assets were over the program limit.

3. The petitioner has a monthly income of \$1,406. (petitioner's spouse), who would be considered the community spouse, has an income of \$839.
4. The petitioner and her husband now have \$118,490 in assets. The income those assets generate is \$481 per month.
5. Total non-exempt assets as determined by the county were \$113,011. The county gave petitioner's wife the maximum community spouse allotment of \$56,423, added to the \$2,000 MA asset limit, and determined that petitioner was over the asset limit.

DISCUSSION

The federal Medicaid Catastrophic Coverage Act of 1988 (MCAA), 42 U.S.C. § 1396, et seq., included extensive changes in state Medicaid (MA) eligibility determinations related to spousal impoverishment. In such cases an "institutionalized spouse" resides in a nursing home or in the community pursuant to MA Waiver eligibility, and that person has a "community spouse" who is not institutionalized or eligible for MA Waiver services. Wis. Stat. §49.455(1).

Under the Spousal Impoverishment Provisions ("SIP") of the MCCA, several steps are taken when a couple applies for Medicaid benefits to cover the care of a spouse who has been institutionalized. First, the state must calculate the total value of the couple's resources and allocate a share of the resources to each spouse. 42 U.S.C. § 1396r-5(c)(1). The amount allocated to the community spouse is called the Community Spouse Resource Allowance ("CSRA"). This amount then need not be spent for the care of the institutionalized spouse.

The income generated from the CSRA, along with the community spouse's other income, such as social security, makes up the community spouse's Minimum Monthly Maintenance Needs Allowance ("MMMNA"). The MMMNA is a level of income that has been estimated by the state as necessary to permit the non-institutionalized spouse to live independently in the community. If either spouse is dissatisfied with the CSRA, he or she may request a "fair hearing." 42 U.S.C. § 1396r-5(e). The community spouse may prove through the fair hearing process that he or she has a financial need above the "minimum monthly needs allowance" based upon exceptional circumstances resulting in financial duress. Wis. Stat. §49.455(4)(a). In this case, the petitioner is challenging the county agency's denial because the community spouse's income is insufficient to meet the MMMNA.

When initially determining whether an institutionalized spouse is eligible for MA, county agencies are required to review the combined assets of the institutionalized spouse and the community spouse. See the MA Handbook, Appendix 23.4.0. All available assets owned by the couple are to be considered. Homestead property, one vehicle, and anything set aside for burial are exempt from the determination. The couple's total non-exempt assets then are compared to the "asset allowance" to determine eligibility.

The county determined that the current asset allowance for this couple is \$56,423. See the MA Handbook, App. 23.4.2, which is based upon Wis. Stat. §49.455(6)(b). \$2,000 (the MA asset limit for the institutionalized individual) is then added to the asset allowance to determine the asset limit under spousal impoverishment policy. If the couple's assets are at or below the determined asset limit, the institutionalized spouse is eligible for MA. If the assets exceed the above amount, as a general rule the spouse is not MA eligible.

As discussed above, assets above the allowance may be retained as determined through the fair hearing process, if income-producing assets exceeding the asset limit are necessary to raise the community spouse's

monthly income to the minimum monthly needs allowance. The minimum monthly maintenance needs allowance in this case is \$1,935. MA Handbook, Appendix 23.6.0.

Wis. Stat. §49.455(6)(b)3 explains this process, and subsection (8)(d) provides in its pertinent part as follows:

If either spouse establishes at a fair hearing that the community spouse resource allowance determined under sub. (6)(b) without a fair hearing does not generate enough income to raise the community spouse's income to the minimum monthly maintenance needs allowance under sub. (4)(c), the department shall establish an amount to be used under sub. (6)(b)3 that results in a community spouse resource allowance that generates enough income to raise the community spouse's income to the minimum monthly maintenance needs allowance under sub. (4)(c).

Based upon the above, a hearing examiner can override the mandated asset allowance by determining assets in excess of the allowance are necessary to generate income up to the minimum monthly maintenance needs allowance for the community spouse. Therefore, the above provision has been interpreted to grant a hearing examiner the authority to determine an applicant eligible for MA even if a spousal impoverishment application was initially denied based upon the fact the combined assets of the couple exceeded the spousal impoverishment asset limit.

Subsection (8)(d) quoted above includes a final sentence that requires the institutionalized spouse to make his or her income available to the community spouse before the assets are allocated. However, the Wisconsin Court of Appeals, in Blumer v. DHFS, 2000 WI App 150, 237 Wis. 2d 810, concluded that the final sentence violated the mandate of the federal MCCA law. The Blumer court held that the hearing examiner first must allocate resources to maximize the community spouse's income, and only if the resources' income does not bring the community spouse's income up to the monthly minimum can the institutionalized spouse's income be allocated. The Blumer decision is on appeal but currently it is the law and must be followed.

The result in this case is as follows. (petitioner's spouse) monthly income is \$839. Allocating the income from all of the couple's assets would bring his monthly income to \$1,320. Since the total still is below \$1,935, the result is that all of the couple's non-exempt assets are re-allocated to (petitioner's spouse). The county then will reallocate some of petitioner's sole income to her husband. Both parties agree that there is no waiver slot at this time and that was not an issue.

CONCLUSIONS OF LAW

All of the non-exempt assets of petitioner and her husband must be allocated to (petitioner's spouse) to maximize his monthly income.

NOW, THEREFORE, it is **ORDERED**

That the matter be remanded to the county with instructions to increase the community spouse asset share to \$118,490, and to determine petitioner's MA eligibility based upon the new community spouse asset allocation. The county shall do so within 10 days of this decision.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence that would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of
Madison, Wisconsin, this _____ day
of _____, 2001.

Joseph A. Nowick
Administrative Law Judge
Division of Hearings and Appeals
79/JAN

cc: Susan Wood